

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

TODD O. JONES,

Petitioner,

v.

Warden CLINTON PERRY,

Respondent.

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Case No. 5:20-cv-00345-MTT-CHW

**Proceedings Under 28 U.S.C. § 2254
Before the U.S. Magistrate Judge**

REPORT AND RECOMMENDATION

Before the Court is a motion to dismiss filed by Respondent Warden Clinton Perry. (Doc. 10). It is **RECOMMENDED** that the motion be **GRANTED**, and that this Section 2254 habeas action be **DISMISSED with prejudice** as untimely. It is further **RECOMMENDED** that Petitioner's motion to stay proceedings (Doc. 13) be **DENIED**.

The record indicates that on May 10, 2007, Petitioner Todd. O. Jones received a sentence of life imprisonment based on his conviction for malice murder. *See Jones v. State*, 287 Ga. 770 n.1 (2010). Petitioner subsequently filed a motion for new trial which was denied on December 29, 2009, *id.*, and thereafter, Petitioner appealed to the Georgia Supreme Court who affirmed in an order dated September 20, 2010. *Jones*, 287 Ga. 770 (2010).

From that date, Petitioner did not seek further review until over three years later, on November 15, 2013, when Petitioner filed a state habeas petition. (Doc. 11-2, p. 1). That petition, as twice amended, was denied on October 12, 2016. (Doc. 11-5). Petitioner commenced the instant federal habeas action in August 2020. (Doc. 1).

Pursuant to the Antiterrorism and Effective Death Penalty Act ("AEDPA"), state prisoners must seek federal habeas review within a one-year period of limitation which ordinarily, as here,

runs from the “date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review.” 28 U.S.C. § 2244(d)(1)(A). AEDPA further provides that this limitation period is tolled while a “properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment ... is pending.” 28 U.S.C. § 2244(d)(2). A tolling analysis, though, is not needed to resolve the timeliness of Petitioner’s Section 2254 petition.

Petitioner’s conviction became final as of December 21, 2010, upon the expiration of the 90-day period in which Petitioner could have, but did not, seek review of the Georgia Supreme Court’s opinion before the United States Supreme Court. U.S. Sup. Ct. R. 13. Accordingly, AEDPA’s clock began to run on that date, and it expired precisely one year later on December 21, 2011, well before petitioner filed his state habeas petition on November 15, 2013.

In his notice (Doc. 14) and motion to stay (Doc. 13), Petitioner asks the Court to take cognizance of recent proceedings before the state habeas court. The Georgia Supreme Court previously noted Petitioner’s allegations that he was not timely served with the original order denying his state habeas petition, *see* (Doc. 11-6, p. 1), and Petitioner’s notice suggests the state habeas court has now republished its order to allow Petitioner to file an application for certificate of probable cause to appeal. As described above, AEDPA’s clock expired before Petitioner made any effort either to file his state habeas petition, or to appeal from the denial of that petition. As a result, the recent proceedings before the state habeas court have no bearing on this Court’s timeliness calculus under AEDPA.

There is, therefore, no cause for a stay of proceedings, and it is accordingly **RECOMMENDED** this Section 2254 habeas action be **DISMISSED with prejudice** as untimely. Additionally, pursuant to the requirements of Rule 11 of the Rules Governing Section 2254 Cases,

it does not appear that Petitioner has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2); *see also Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). Accordingly, it is further **RECOMMENDED** that the Court deny a certificate of appealability in its final order.

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Recommendation, or seek an extension of time to file objections, WITHIN FOURTEEN (14) DAYS after being served with a copy thereof. The District Judge will make a de novo determination of those portions of the Recommendation to which objection is made. All other portions of the Recommendation may be reviewed for clear error.

The parties are further notified that, pursuant to Eleventh Circuit Rule 3-1, “[a] party failing to object to a magistrate judge’s findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court’s order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice.”

SO RECOMMENDED, this 26th day of January, 2021.

s/ Charles H. Weigle
Charles H. Weigle
United States Magistrate Judge